

**TEN RECENT DEVELOPMENTS
IN INSURANCE LAW
THAT EVERY INSURER, BUSINESS PERSON
AND LAWYER SHOULD UNDERSTAND**

Presented by:

***The Insurance Law Committee of the
Business Law Section of the
California State Bar***

**Joint Business Law Section Spring Meeting
and
CBA Bank Counsel Seminar**

May 13, 2004

MODERATOR AND PANELIST

Darrel J. Hieber

Skadden, Arps, Slate, Meagher & Flom LLP

PANELISTS

Carey S. Barney

Lord, Bissel & Brook LLP

William S. Jameson

CIGNA HealthCare, Inc.

Mitchell Tilner

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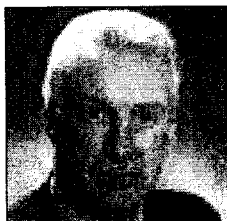
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Since joining Lord, Bissell & Brook in 1982, Carey Barney has devoted his practice to counseling clients on a variety of corporate and transactional matters, with a particular emphasis on insurance industry issues. Carey has represented publicly and privately held U.S. and international insurers, reinsurers and intermediaries in both the life/health and property/casualty fields in connection with a wide range of regulatory and transactional issues, including corporate organization and restructuring, licensing, privacy compliance, product development, marketing, mergers and acquisitions, reinsurance and market conduct and compliance. He also has extensive experience in assisting trade associations, retailers, financial institutions, and other non-insurance businesses design and implement successful insurance and warranty programs for their members, customers and employees.

Carey is a member of the California State Bar Standing Committee on Professional Liability Insurance, as well as the California State Bar Insurance Law Committee, and also serves on the board of the Inner City Youth Charitable Foundation, a nonprofit organization that provides summer camp, career mentoring, and leadership development programs for disadvantaged urban youth.

Carey is admitted to practice in California, Illinois, and before the U.S. Tax Court. He received his undergraduate degree, *Summa Cum Laude*, from Brigham Young University in 1979, and earned his J.D. at the University of Chicago Law School in 1982.



Darrel J. Hieber

Partner

Skadden, Arps, Slate, Meagher & Flom LLP
Litigation

Darrel Hieber's practice involves a wide range of complex and high-profile litigation, including class actions, unfair business practices, antitrust, entertainment, technology, insurance, securities fraud, mergers and acquisitions, constitutional law, arbitration and government enforcement actions.

Consumer Class Actions. Mr. Hieber defends insurers, lenders and other providers of consumer services in class actions and "private attorney general" actions challenging business practices under California's "Unfair Competition Law."

Recent cases include: third-party claims for "diminished value" to vehicles and insured challenges to insurer practices regarding repair shops, estimates and parts; insured actions challenging the reserving and claims practices of workers' compensation insurers; agent actions challenging insurer commission practices; and consumer claims challenging various financing, telemarketing and Internet sales practices.

Mr. Hieber also has represented clients in investigations and enforcement actions by the California Insurance Commissioner, the Attorney General and county district attorneys concerning various consumer practices.

Antitrust, Entertainment, and Technology. Mr. Hieber counsels clients in actions involving antitrust, tort and contract issues concerning motion pictures and television programming, trade secrets, technology, distribution and licensing. For example, Mr. Hieber represented:

- Home Box Office in an antitrust action challenging its motion picture license agreements with studios, an action involving the interception of its satellite signals in Canada, an action against a completion bond company for failure to complete and deliver motion pictures, and a recent action involving *The Sopranos* television program;
- Southern Natural Gas Company in the successful defense of antitrust actions challenging its pipeline distribution practices;
- Cytec Industries, Inc. in the defeat of a licensor's claims challenging Cytec's decision to cease efforts to develop a new polymer technology for fabricating naval ships; and
- a major investment bank in obtaining complete vindication against claims of misappropriation of trade secrets arising out of a hostile tender offer.

Insurance Regulatory Matters. Mr. Hieber regularly advises insurers on statutory, regulatory and corporate matters, including licensing, withdrawal from the market, capital and solvency issues, and representation in rate proceedings and enforcement actions. For example, Mr. Hieber represented:

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Biography

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Education

J.D., University of California at Los Angeles, 1980

B.A., University of California at Santa Barbara, 1977

Professional Experience

Law Clerk to the Honorable Wm. Matthew Byrne, Jr., U.S. District Court, Central District of California (1980-1981)

Associations/Affiliations

Chair, Insurance Law Committee, California State Bar Business Section (2003-2004)

Chair (2001-2002) and member, Los Angeles County Bar Antitrust and Unfair Business Practices Section

Authorships

Co-author, "Recent Case Law Weapons for Defending Against California Unfair Business Practice Claims," Skadden, 2002/2003

Co-author, "The Application of California's Statutory Unfair Competition Laws to the Business of Insurance," Loriman, 2001

(continued on reverse side)

Biography

Darrel J. Hieber

- the insurance industry in the widely publicized constitutional challenge to Proposition 103, the insurance reform measure, before the California Supreme Court resulting in the invalidation of its mandate that insurers roll back premiums by more than \$6 billion;
- insurers in the successful constitutional challenge to Nevada's similar rate rollback statute before the Ninth Circuit;
- The Ohio Casualty Insurance Group in defense of the California Department of Insurance's \$90 million rate rollback order under Proposition 103, and in the Ohio Casualty's widely reported withdrawal from the California market;
- State Farm Mutual Automobile Insurance Company in the successful defense of a class action seeking to compel the declaration of more than \$6 billion in dividends and to enjoin it from making political contributions;
- Farmers Insurance Exchange in defeating the California Attorney General's action seeking to invalidate settlements entered into by Farmers and other insurers with the California Insurance Commissioner concerning the handling of Northridge Earthquake claims;
- the developer of Florida housing developments destroyed by Hurricane Andrew in the negotiation and settlement of hundreds of subrogation claims brought by various insurers; and
- insurers, creditors or shareholders in each of the three-largest insurer insolvency conservatorship proceedings in recent years — the Mission Insurance, Executive Life and Golden Eagle conservatorships.

Securities Fraud, Mergers and Acquisitions. Mr. Hieber represents investment banks, insurers and other financial institutions in litigation arising out of mergers and acquisitions, and in defense of securities-related fraud claims. For example, he represented:

- Zenith Insurance in the successful defense of an action arising out of a dispute over the purchase price of a Florida workers' compensation business it acquired; and
- a nationwide securities brokerage firm in defense of a class action and receivership action involving claims of hundreds of investors in a failed series of allegedly fraudulent real estate investment partnerships.

Before joining Skadden, Mr. Hieber was involved in the successful challenge before the Fifth Circuit of the federal government's approval of a major freeway expansion project through downtown Fort Worth, Texas. He also successfully defended the Inter-American Development Bank in state and federal court actions challenging the bank's immunities under the International Organization Immunities Act, and asserting contract and tort claims arising out of foreign government projects.

Mr. Hieber lectures on advocacy, California's Unfair Competition Law and insurance law issues.

Authorships continued:

Co-author, "A Primer on Directors and Officers Liability Insurance," *Loriman*, 2000

Co-author, "Commissioner Garamendi's Four-Year Struggle to Implement Proposition 103," *Business Law News*, State Bar of California, 1994

Co-author, "Federal Regulation of the Business of Insurance: Current Proposals," *Insurance Companies In Crisis*, PLI, 1991

Co-author, "Proactive Company, Officer and Director Responses," *Insurance Companies In Crisis*, PLI, 1991

Co-author, "Living with Proposition 103," *Skadden*, 1989

Admissions

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**WILLIAM S. JAMESON
ASSISTANT GENERAL COUNSEL
CIGNA HEALTHCARE**

William S. Jameson presently serves as the Assistant General Counsel for CIGNA HealthCare Companies in California, Oregon and Washington. Prior to his employment with CIGNA, Bill worked for O'Melveny & Myers as an associate in the Labor & Employment Law Department.

During his ten years with CIGNA, Bill has handled numerous employment law matters, provider contracting challenges, policy design and implementation issues, provider and member disputes, and regulatory relations. Bill's Legal & Public Affairs Unit at CIGNA has been and remains actively involved in significant HMO issues in California, playing a lead healthplan role on the Creditor's Committee during the MedPartners Bankruptcy and, more recently, providing a model for the proper handling of member re-assignment in the event of network provider terminations.

Bill is a graduate of Loyola of Los Angeles Law School and U.C. Berkeley.

RESUME OF MITCHELL C. TILNER

MITCHELL C. TILNER is a partner in the Encino firm of Horvitz & Levy LLP, specializing in civil appeals. He has been certified by the State Bar of California Board of Legal Specialization as a specialist in appellate law and has handled or supervised more than 200 appeals and writ proceedings. He has published numerous articles on appellate law, brief writing, and insurance law.

Mr. Tilner holds a B.A. from Yale University, a J.D., magna cum laude, from Loyola Law School, and a LL.M. from Columbia Law School. He was Chief Ninth Circuit Editor on the Loyola Law Review. He served as a law clerk for Judge Arthur Alarcon of the U.S. Court of Appeals for the Ninth Circuit.

Mr. Tilner is a member of the California Academy of Appellate Lawyers; the American Bar Association, Litigation Section, Appellate Practice Committee; the American Bar Association, Tort and Insurance Practice Section, Appellate Advocacy Committee; the Los Angeles County Bar Association, Appellate Courts Committee; the Association of Southern California Defense Counsel; and Scribes – The American Society of Writers on Legal Subjects.

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